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**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

Cung Le, Nathan Quarry, Jon Fitch, Brandon  
Vera, Luis Javier Vazquez, and Kyle  
Kingsbury on behalf of themselves and all  
others similarly situated,

Plaintiffs,

vs.

Zuffa, LLC, d/b/a Ultimate Fighting  
Championship and UFC,

Defendant.

Case No.: 2:15-cv-01045 RFB-(PAL)

**PLAINTIFFS' RESPONSE TO ZUFFA'S  
UPDATE TO THE JOINT STATUS  
REPORT AND REQUEST TO SUBMIT A  
REBUTTAL DECLARATION OF CHUCK  
KELLNER ON MAY 16, 2016**

1  
2 On April 29, 2016, the parties filed a Joint Status Report with the Court. ECF No. 244.  
3 The Joint Status Report was submitted pursuant to the Court's Order at the last Status Conference  
4 of February 23, 2016. ECF No. 225.<sup>1</sup>

5 Prior to the filing, on April 25, 2016, the parties agreed during a meet and confer call that  
6 the filing of consultant declarations from Charles Kellner (for Plaintiffs) and Helen Moure (for  
7 Defendant) may be appropriate but that neither party had yet decided whether they would include  
8 such a declaration. On Wednesday, April 27, 2016, Plaintiffs informed Defendant in writing that  
9 Plaintiffs were requesting that Charles Kellner update his prior declaration and that, if Plaintiffs  
10 decided to submit the declaration, Plaintiffs would provide a draft when it was available.  
11 Correspondence, Apr. 27, 2016, 5:09pm Eastern, Michael Dell'Angelo to Defendant's Counsel.  
12 Plaintiffs further requested that, as discussed, Defendant would provide that same notice if  
13 Defendant intended to have Ms. Moure prepare a declaration. *Id.*

14 On April 28, 2016, Plaintiffs provided Defendant with a draft of the Kellner Declaration.  
15 Plaintiffs provided the draft even though Plaintiffs had yet to carefully review it in order to provide  
16 Defendant with the maximum opportunity available to review it and determine their course of  
17 action. Correspondence, Apr. 28, 2016, 8:42pm Eastern, Michael Dell'Angelo to Suzanne Jaffe  
18 Nero. Plaintiffs then provided a final, executed version on April 29, 2016 for submission with the  
19 Joint Status Report. *See* Correspondence, Apr. 29, 2016, 3:32pm Eastern, Michael Dell'Angelo to  
20 Suzanne Jaffe Nero.

21 Following the postponement of the Status Conference from May 3 to May 17, Plaintiffs sent  
22 Defendant a letter seeking additional information and proposing further refinements to Plaintiffs'  
23 Search Term Proposal. Correspondence, May 4, 2016, Michael Dell'Angel to John Cove. These

24 \_\_\_\_\_  
25 <sup>1</sup> That Order made the Joint Status Report due by 4:00pm Pacific Time on April 21, 2016,  
26 but because the Status Conference was continued until May 3, 2016, the Joint Status Report  
27 deadline was extended by eight days to April 29, 2016. After the Joint Status Report was filed,  
there was no request from the Court for updated materials.

1 proposals addressed and/or sought additional information concerning the various “problems”  
2 Defendant identified in the Joint Status Report with Plaintiffs’ Search Term Proposal.

3 To date, Defendant has never responded substantively or otherwise to Plaintiffs’ May 4,  
4 2016, though each piece of information would have been useful to the Court in reviewing the  
5 parties’ prior submission.<sup>2</sup>

6 Instead, today, Defendant filed an “Update to Joint Status Report” and Declaration of Helen  
7 Bergman Moure. ECF No. 254 & 254-1. Neither document was requested or permitted by any  
8 Order of the Court. Furthermore, Defendant did not notify Plaintiffs of its intent to file such  
9 documents.<sup>3</sup> Worse still, Plaintiffs specifically requested that Defendant provide notice at the time  
10 Defendant knew of its intent to submit, and certainly before filing, a declaration from Ms. Moure.  
11 See Correspondence, Apr. 27, 2016, 5:09pm Eastern, Michael Dell’Angelo to Defendant’s Counsel.  
12 Defendant did not even extend the empty courtesy of notifying Plaintiffs of its intent when sending  
13 Plaintiffs a letter concerning the 1.8 million documents just *fifteen minutes before filing*.

14 Defendant’s purported justification for the filing is to (1) provide the Court with  
15 information concerning the 1.8 million documents Defendant “discovered” after Plaintiffs’ repeated  
16 prodding for answers about its existence, even though the parties have yet to meet and confer on  
17 the data provided; and (2) provide the Court with the declaration of Ms. Moure because Ms. Moure  
18 did not have the opportunity to “respon[d]” to the Declaration of Charles Kellner, ECF No. 244-1.  
19 However, Defendant never addressed these issues with Plaintiffs. The reasoning underlying the  
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21 <sup>2</sup> Today, however, just fifteen minutes before filing its Supplement to the Joint Status  
22 Report, Defendant provided Plaintiffs with similar information Defendant provided the Court.  
23 Specifically, Defendant provided various counts of documents (though it is unknown whether these  
24 counts have been deduplicated or otherwise winnowed pursuant to existing agreed proposals) and a  
25 proposal for which documents Defendant would review for production. Defendant requested that  
26 the parties meet and confer on Monday, May 16, 2016 concerning its proposal.

27 <sup>3</sup> Defendant also knew that Plaintiffs’ counsel Michael Dell’Angelo was out of the country  
at the time of the filing which would materially hamper Plaintiffs’ ability to respond. Mr.  
Dell’Angelo’s absence, however, was not an excuse to fail to provide advance notice of these  
improper filings.

1 submission of the Moure Declaration is baseless. First, there is no basis for Defendant's assertion  
2 that it is entitled to a rebuttal to the Kellner Declaration. The structure of the filings with the Court  
3 is "Joint". Thus, filing a one-sided declaration without leave of the Court (or notice to Plaintiffs to  
4 provide an opportunity for a "Joint" filing) was inappropriate. Second, Defendant had a draft of the  
5 Kellner Declaration on April 28, 2016, *fifteen days* before the filing of the Moure Declaration. Ms.  
6 Moure's claim that these fifteen days were required to come up with her assertions (many of which  
7 mischaracterize the record) is specious. Regardless, it would have been more efficient and  
8 transparent if Defendant had notified Plaintiffs of its intention and the parties had worked out a  
9 mutually agreed upon schedule to meet and confer and update the Court.

10       Importantly, on May 3, 2016, the parties met and conferred and filed a stipulation seeking  
11 to reset the Status Conference from May 10, 2016 to May 17, 2016. ECF No. 248. Defendant could  
12 have notified Plaintiffs and the Court of its intent so a mutually agreeable schedule could have been  
13 proposed, but Defendant instead stayed silent. There is no reasonable justification for Defendant's  
14 failure to provide notice of its intent to file these papers. The only apparent purpose of the failure  
15 was to deprive Plaintiffs the opportunity to respond. Because Defendant improperly concealed its  
16 intent to file this inappropriate "Update to the Joint Status Report" and "Declaration of Helen  
17 Bergman Moure" without prior notice to Plaintiffs, if the Court intends to consider this material,  
18 Plaintiffs request the opportunity to substantively respond with a supplemental declaration from  
19 Charles Kellner limited to no more than 5 pages on Monday, May 16, 2016.

1 DATED this 13th day of May, 2016

2 Respectfully Submitted,

3  
4 By: /s/ Patrick F. Madden

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 13th day of May, 2016 a true and correct copy of  
**PLAINTIFFS' RESPONSE TO ZUFFA'S UPDATE TO THE JOINT STATUS REPORT  
AND REQUEST TO SUBMIT A REBUTTAL DECLARATION OF CHUCK KELLNER  
ON MAY 16, 2016** was served via email on all parties or persons requiring notice.

By: /s/ Patrick F. Madden